

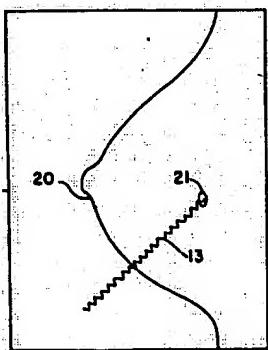
REMARKS

Reconsideration of the rejections set forth in the Office Action mailed April 21, 2006, is respectfully requested. Claims 46-49, 54, and 61 have been canceled without prejudice. Claims 50 and 60 have been amended to include the subject matter from dependent claims 54 and 61, respectively. Therefore, no new matter was added with these amendments. Claims 50-51, 55-60, 62, and 65-67 remain pending in this application.

Art Rejections

Claim 46-51, 55, 56-60, and 65-67 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Campbell et al. (USP Re. 34,936) in view of Kaldany (USP 5,562,613) and Shiber (USP 5,195,540).

Applicants respectfully assert that this combination of references would not result in deployment of the marker such that "*no part of the marker element extends outside the body,*" as required by the claims. As seen in Fig. 6 of Shiber reproduced below, spiral wire 13 clearly extends outside the body.



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Indeed, Shiber requires that the marker is left “sticking out of the patient’s body.” (See Col. 1, lines 26-27; see also Col. 2, lines 33-39 “The proximal section of the spiral wire *which is left sticking out of the patient’s body* can be bent and taped to the patient’s body, to prevent it from unscrewing and drifting from the lesion and to reduce discomfort to the patient. Since the spiral wire is also visible to the naked eye it serves to readily locate the lesion later on, for example during surgery.” (emphasis added)) Therefore, the cited art teaches away from the asserted combination.

Additionally, Applicants respectfully assert that there is no motivation to combine the references. The marking device of Shiber consists of a spiral wire 13 that is “slid and rotated over a guiding needle like a cork screw.” (See Col. 2, lines 27-28). Similar to the device of Rank, discussed in the Amendment and Response filed on April 12, 2005, the marker is deployed by rotating the marker. The marking device of Shiber would not be operable for deployment through a side exit port of Campbell in view of Kaldany because it could not be released through a side port because it is coiled around a guiding needle, both of which extend from the lesion to a point outside of the body.

Information Disclosure Statement

In reviewing the signed Form PTO/SB/08A’s returned by the Examiner, Applicants note that the Examiner has not returned the PTO/SB08A mailed on **March 31, 2003; July 15, 2004; July 26, 2004; and September 30, 2005** (duplicate copies have been attached for the

Patent US 224C3
Attorney Docket: 032,290-109
(formerly END-777)

convenience of the Examiner). Applicants respectfully request that the Examiner review these references and return initialed Forms PTO/SB/08A to the Applicants.

For all the foregoing reasons, Applicants assert the claims are in condition for allowance. Favorable action on the merits of the claims is therefore earnestly solicited. If any issues remain, please contact Applicant's undersigned representative at (949) 760-9600. The Commissioner is hereby authorized to charge any additional fees that may be required to Deposit Account No. 50-2862.

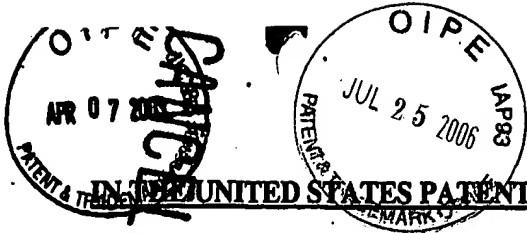
Respectfully submitted,
O'MELVENY & MYERS LLP

Dated: July 21, 2006

By: Diane K Wong
Diane K. Wong
Reg. No. 54,550
Attorneys for Applicants

JCK/DKW/cp

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(949) 760-9600



Docket No. END-777

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants [LED] Seth A. Foerster et al.

Serial No. 09/954,646 Art Unit: 3764

Filed : September 18, 2001 Examiner: Benjamin Koo

For : METHOD AND DEVICES FOR
DEFINING AND MARKING TISSUE

Assistant Commissioner for Patents
Washington, D.C. 20231

I hereby certify that this correspondence is being deposited with the
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March 31, 2003

(Date of Deposit)

Patricia A. Deffinger

Name of person signing the Certificate

Patricia A. Deffinger
(Signature)

March 31, 2003

(Date of Signature)

INFORMATION DISCLOSURE STATEMENT

Dear Sir:

Pursuant to 37 C.F.R. §1.56 and in accordance with 37 C.F.R. §§1.97-1.98, information relating to the above-identified application is hereby disclosed. Inclusion of information in this statement is not to be construed as an admission that this information is material as that term is defined in 37 C.F.R. §1.56(b).

Applicant(s) reserve(s) the right to establish the patentability of the claimed invention over any of the information provided herewith, and/or to prove that this information may not be prior art, and/or to prove that this information may not be enabling for the teachings purportedly offered.

This statement should not be construed as a representation that a search has been made, or that information more material to the examination of the present patent application does not exist.

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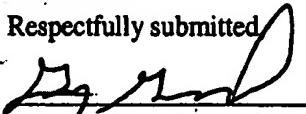
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This Information Disclosure Statement is being filed after filing of a Request for Continued Examination and prior to receipt of an Office Action responding to the RCE.

- Copies of references listed on the attached PTO Form 1449 were previously cited by or submitted to the Patent and Trademark Office in one or both of prior applications 08/858,389 and 09/776,125 to which this application claims priority, and so copies are not included with this paper.
- There are no listed references which are not in the English language.
- The relevance of those listed references which are not in the English language is as follows:

Please charge any deficiency or credit any overpayment to Deposit Account No. 10-0750/END-777/GSG. This form is submitted in triplicate.

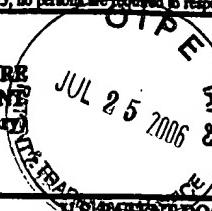
Respectfully submitted

Gerry S. Gressel
Reg. No. 34,342
Attorney for Applicants

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(513) 337-3535
Dated: March 31, 2003

Substitute for form 1449A/PTO

INFORMATION DISCLOSURE
STATEMENT BY APPLICANT
(use as many sheets as necessary)

Sheet 1 of 2



Application Number	09/954,646
Filing Date	September 18, 2001
First Named Inventor	Seth A. Foerster
Group Art Unit	3764
Examiner Name	
Attorney Docket Number	END-777

U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear
		Number	Kind Code ² (if known)			
		4,086,914		Moore, Edwin Bailey	05/78	ALL
		4,402,308		Scott, Walter P.	09/83	ALL
		4,709,703		Lazarow et al.	12/87	ALL
		4,871,094		Fujioka et al.	12/87	ALL
		5,358,474		Kaldany, Antoine	10/94	ALL
		5,487,392		Haaga, John R.	01/96	ALL
		5,526,822		Burbank et al.	06/96	ALL
		5,538,010		Darr et al.	07/96	ALL
		5,562,613		Kaldany, Antoine	10/96	ALL
		5,649,547		Ritchart et al.	07/97	ALL
		6,056,700		Burney et al.	03/99	ALL
		5,002,548		Campbell et al.	03/26/91	ALL
		5,242,457		Alcopov et al.	09/93	ALL
		5,413,584		Schulze	05/95	ALL
		5,496,314		Eggers	03/96	ALL
		5,681,262		Isse	10/97	ALL
		6,228,055	B1	Foerster et al.	05/08/01	ALL

FOREIGN PATENT DOCUMENTS

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		Office ³	Number ⁴	KindCode ⁵				
							ALL	

Examiner Signature

Date Considered

OTHER PRIOR ART - NON PATENT LITERATURE DOCUMENTS

Examiner's Initials*	Cite No. ¹	Include name of the author (in CAPITOL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T ⁴
		S.S. Kramer et al; "Permanent Radiopaque Marker Technique for the Study of Pharyngeal Swallowing in Dogs"; Dysphagia vol. pp. 163-167 (1987).	
		Homer et al; "The Geographic Cluster of Microcalcifications of the Breast" Surgery, Gynecology & Obstetrics, DCC. (1985).	
		Finan et al; "Intrastinal Radiotherapy for Early Stage Vaginal Cancer"; The Journal of Reproductive Medicine, Vol. 38, No. 3 Mar. 1993	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

1 Unique citation designation number. 2 See attached Kinds of U.S. Patent Documents. 3 Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). 4 For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. 5 Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. 6 Applicant is to place a check mark here if English language Translation is attached.

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**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**
(use as many sheets as necessary)

Sheet 2 of 2

<i>Application Number</i>	09/954,646
<i>Filing Date</i>	September 18, 2001
<i>First Named Inventor</i>	Seth A. Foerester
<i>Group Art Unit</i>	3764
<i>Examiner Name</i>	
<i>Attorney Docket Number</i>	END-777

U.S. PATENT DOCUMENTS

FOREIGN PATENT DOCUMENTS

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		Office ³	Number ⁴	KindCode ⁵				
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Docket No. END-777

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Seth A. Forester et al.

Serial No. : 09/954,646 Art Unit:

Filed : September Examiner:

For : METHODS AND DEVICES FOR DEFINING
AND MARKING TISSUE

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Kimberly M. Moses

Name of person signing the Certificate

Kimberly Moses 7-15-04
(Signature) (Date of Signature)

Assistant Commissioner for Patents
Washington, D.C. 20231

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INFORMATION DISCLOSURE STATEMENT

Dear Sir:

Pursuant to 37 C.F.R. §1.56 and in accordance with 37 C.F.R. §§1.97-1.98, information relating to the above-identified application is hereby disclosed. Inclusion of information in this statement is not to be construed as an admission that this information is material as that term is defined in 37 C.F.R. §1.56(b).

Applicant(s) reserve(s) the right to establish the patentability of the claimed invention over any of the information provided herewith, and/or to prove that this information may not be prior art, and/or to prove that this information may not be enabling for the teachings purportedly offered.

This statement should not be construed as a representation that a search has been made, or that information more material to the examination of the present patent application does not exist.

[] In accordance with §1.97(b), since this Information Disclosure Statement is being filed either within three months of the filing date of the above-identified national

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application (other than a continued prosecution application under §1.53(d)), within three months of the date of entry into the national stage of the above identified application as set forth in §1.491, or before the mailing date of a first Office Action on the merits of the above-identified application, or before the mailing date of a first Office Action after the filing of a request for continued examination under §1.114, no additional fee is required.

[] In accordance with §1.129(a), this Information Disclosure Statement is being filed in connection with [] the first or [] second After Final Submission, therefore:

- [] Statement in Accordance with §1.97(e) (attached); or
[] Please charge Deposit Account No. 10-0750/END-777/GSG the fee of \$180.00 as set forth in §1.17(p).

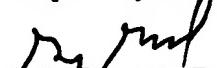
[X] In accordance with §1.97(c), this Information Disclosure Statement is being filed after the period set forth in §1.97(b) above but before the mailing date of either a Final Action under §1.113 or a Notice of Allowance under §1.311, or an action that otherwise closes prosecution and that it is accompanied by one of:

- [] Statement in Accordance with §1.97(e) (attached); or
[X] Please charge Deposit Account No. 10-0750/END-777/GSG the fee of \$180.00 as set forth in §1.17(p).

[X] Copies of references listed on the attached Form PTO-1449 are not included under 37CFR 1.98(d) where the references have been cited in US Patent Application 09/776,125 to which the application claims priority.

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10-0750/GSG/END-777.

Respectfully submitted,

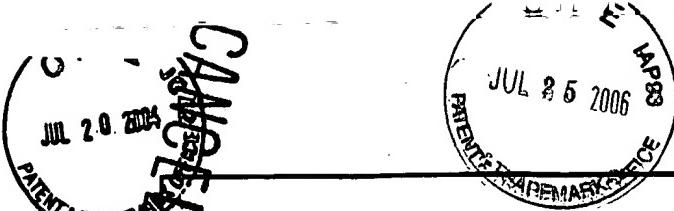


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Date: July 15, 2004



SUBMISSION UNDER MPEP 609 D

Page 1 of 1

Application Number	09/954,646
Filing Date	September 18, 2001
First Named Inventor	Seth A. Foerster et al.
Group Art Unit	3737
Examiner Name	E. Mantis Mercader
Attorney Docket Number	END -777

U.S. PATENT DOCUMENTS

FOREIGN PATENT DOCUMENTS

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OTHER PRIOR ART - NON PATENT LITERATURE DOCUMENTS

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Sheet 1 of 2

Application Number	09/954,646
Filing Date	September 18, 2001
First Named Inventor	Seth A. Foerster et al.
Group Art Unit	3737
Examiner Name	E. Mantis Mercader
Attorney Docket Number	END -777

U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear
		Number	Kind Code ² (if known)			
		3,592,185		Ephraim, et al.	07-13-1971	ALL
		4,087,791		Lemberger	05-02-1978	ALL
		4,541,438		Parker, et al.	09-17-1985	ALL
		4,735,210		Goldenberg	04-05-1988	ALL
		4,735,798		Gordon	04-05-1988	ALL
		5,041,826		Milheiser	08-20-1991	ALL
		5,101,827		Goldenberg	04-07-1992	ALL
		5,114,703		Wolf, et al.	05-19-1992	ALL
		5,127,916		Spencer, et al.	07-07-1992	ALL
		5,300,120		Knapp, et al.	04-05-1994	ALL
		5,433,751		Christel, et al.	07-18-1995	ALL
		5,437,279		Gray	08-01-1995	ALL
		5,470,308		Edwards, et al.	11-28-1995	ALL
		5,482,040		Martin, Jr.	01-09-1996	ALL
		5,496,536		Wolf	TECHNOLOGY CENTER R3700 JUL 23 2004	ALL
		5,514,379		Weissleder, et al.	05-07-1996	ALL
		5,555,885		Chance	09-17-1996	ALL
		5,579,766		Gray	12-03-1996	ALL
		5,582,172		Papisov, et al.	12-10-1996	ALL

FOREIGN PATENT DOCUMENTS

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		Office ³	Number ⁴	KindCode ⁵				
		WO	98/09247	A1	Cothren, et al.	03-05-1998	ALL	
		WO	98/52617	A2	McIntire, et al.	11-26-1998	ALL	

Examiner Signature	Date Considered
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Sheet 1 of 2

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PATENT & TRADEMARK FEE	
Application Number	09/954,646
Filing Date	September 18, 2001
First Named Inventor	Seth A. Foerster et al.
Group Art Unit	3737
Examiner Name	E. Mantis Mercader
Attorney Docket Number	END -777

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		4,735,210		Goldenberg	04-05-1988	ALL
		4,735,796		Gordon	04-05-1988	ALL
		5,041,826		Milheiser	08-20-1991	ALL
		5,101,827		Goldenberg	04-07-1992	ALL
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		5,514,379		Weissleder, et al.	05-07-1996	ALL
		5,555,885		Chance	09-17-1996	ALL
		5,579,766		Gray	12-03-1996	ALL
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Examiner Signature	Date Considered
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SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT BY APPLICANT

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Sheet 2 of 2

Application Number	09/954,646
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		5,595,177		Mena, et al.	01-21-1997	ALL
		5,674,288		Knapp, et al.	10-07-1997	ALL
		5,697,902		Goldenberg	12-16-1997	ALL
		5,716,407		Knapp, et al.	02-10-1998	ALL
		5,725,578		Knapp, et al.	03-10-1998	ALL
		5,732,704		Thurston, et al.	03-31-1998	ALL
		5,776,093		Goldenberg	07-07-1998	ALL
		5,776,094		Goldenberg	07-07-1998	ALL
		5,803,913		Khalkhalli, et al.	09-08-1998	ALL
		5,810,808		Ritchart, et al.	09-22-1998	ALL
		5,855,609		Knapp	01-05-1999	ALL
		5,857,463		Thurston, et al.	01-12-1999	ALL
		5,868,778		Gershony, et al.	02-09-1999	ALL
		5,895,840		Khalkhalli	04-20-1999	ALL
		5,899,865		Chance	05-04-1999	ALL
		5,913,857		Ritchart, et al.	06-22-1999	ALL
		5,970,986		Bolz, et al.	10-26-1999	ALL
		5,977,431		Knapp, et al.	11-02-1999	ALL

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		Office ³	Number ⁴	KindCode ⁵				
		WO	99/25248	A1	Carroll	05-27-1999		
		WO	99/46284	A2	Rajotte, et al.	09-16-1999		

Examiner Signature	Date Considered
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¹ Unique citation designation number. ² See attached Kinds of U.S. Patent Documents. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁴ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁵ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. ⁶ Applicant is to place a check mark here if English language Translation is attached.

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**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**
(use as many sheets as necessary)

Sheet 1 of 3

<i>Application Number</i>	09/954,646
<i>Filing Date</i>	September 18, 2001
<i>First Named Inventor</i>	Seth A. Foerster et al.
<i>Group Art Unit</i>	3737
<i>Examiner Name</i>	E. Mantis Mercader
<i>Attorney Docket Number</i>	END -777

U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear
		Kind Code/Number (if known)	Cited Document			
		Re. 35,391		Brauman	12-03-1996	ALL
		3,194,239		Sullivan	01-16-1963	ALL
		4,298,998		Nafsey	11-10-1981	ALL
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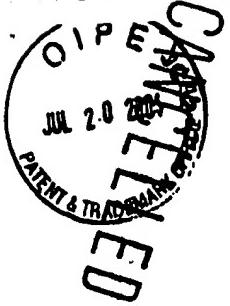
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	Filing Date	September 18, 2001	
	First Named Inventor	Seth A. Foerster et al.	
	Group Art Unit	3737	
	Examiner Name	E. Mantis Mercader	
Sheet 2 of 3		Attorney Docket Number	END -777

OTHER PRIOR ART - NON PATENT LITERATURE DOCUMENTS

Examiner's Initials*	Cite No. ¹	Include name of the author (in CAPITOL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T ²
		WANG HOM-LAY et al. "Evaluation of an Absorbable Collagen Membrane in Treating Class II Furcation Defects"; pp 1029-1036. November 1994.	
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Substitute for form 1449A/PTO		Application Number	09/954,646
INFORMATION DISCLOSURE STATEMENT BY APPLICANT (use as many sheets as necessary)		Filing Date	September 18, 2001
		First Named Inventor	Seth A. Foerster et al.
		Group Art Unit	3737
		Examiner Name	E. Mantis Mercader
		Attorney Docket Number	END -777
Sheet 3 of 3			

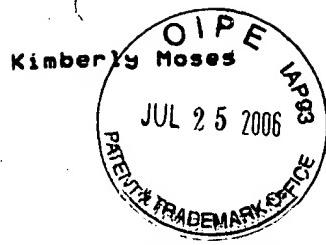
OTHER PRIOR ART - NON PATENT LITERATURE DOCUMENTS			
Examiner's Initials*	Cite No. ¹	Include name of the author (in CAPITOL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T ²
		PARK, KINAM et al.; "Biodegradable Hydrogels for Drug Delivery." Purdue University, School of Pharmacy. Pp. 2-28	
		CHU, C.C. and DUMITRIU, SEVERIAN <u>Polymeric Biomaterials</u> 2 nd ed., "Biodegradable Biomaterials Having Nitric Oxide Biological Activity." Ch. 5. Pp 123-124. and ROKKANEN, PENTTI U. "Bioabsorbable Polymers for Medical Applications with an Emphasis on Orthopedic Surgery. Ch. 20 Pp. 545-547.	
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Examiner Signature		Date Considered	

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Docket No. END-777

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Seth A. Forester et al.

Serial No. : 09/954,646 Art Unit: 3737

Filed : September 18, 2001 Examiner: Eleni Mercader

For : METHODS AND DEVICES FOR DEFINING AND MARKING TISSUE

I hereby certify that this correspondence is being facsimile transmitted to the
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Kimberly M. Murray

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Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Dear Sir:

Pursuant to 37 C.F.R. §1.56 and in accordance with 37 C.F.R. §§1.97-1.98, information relating to the above-identified application is hereby disclosed. Inclusion of information in this statement is not to be construed as an admission that this information is material as that term is defined in 37 C.F.R. §1.56(b).

Applicant(s) reserve(s) the right to establish the patentability of the claimed invention over any of the information provided herewith, and/or to prove that this information may not be prior art, and/or to prove that this information may not be enabling for the teachings purportedly offered.

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[] In accordance with §1.97(b), since this Information Disclosure Statement is being filed either within three months of the filing date of the above-identified national application (other than a continued prosecution application under §1.53(d)), within three months of the date of entry into the national stage of the above identified application as set

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identified application, or before the mailing date of a first Office Action after the filing of a request for continued examination under §1.114, no additional fee is required.

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- Statement in Accordance with §1.97(e) (attached); or
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[x] Copies of references listed on the attached Form PTO-1449 are not included under 37 CFR 1.98(d) where the references have been cited in US Patent Application 09/776,125 to which this application claims priority.

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Respectfully submitted,



Gerry S. Gressel
Reg. No. 34,342
Attorney for Applicants

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933
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Date: July 26, 2004

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Sheet 1 of 5

U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear
		Kind Code ²	Number			
		4,248,214		Hannah, et al.	02-03-1981	ALL
		4,541,438		Parker, et al.	09-17-1985	ALL
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FOREIGN PATENT DOCUMENTS

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		Office ³	Number ⁴	Kind Code ⁵				
		EP	0 694 503	A2	Stinson	08-06-1998	ALL	
		PCT	00/38579	A2	Sirimanne, et al.	12-23-1999	ALL	

Examiner Signature	Date Considered

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² Unique citation designation number. ³ See attached Kind of U.S. Patent Documents. ⁴ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁵ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁶ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 II possible. ⁷ Applicant is to place a check mark here if English language Translation is attached.

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Sheet 2 of 5

Application Number 09/954,646

Filing Date September 18, 2001

First Named Inventor Foerster, Seth A., et al.

Group Art Unit 3737

Examiner Name Eleni Mantis Mercader

Attorney Docket Number END-777

U.S. PATENT DOCUMENTS

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		Number	Kind Code* (If known)			
		5,080,655		Hasga	01-14-1992	ALL
		5,083,570		Mosby	01-28-1992	ALL
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Application Number

09/954,648

Filing Date

September 18, 2001

First Named Inventor

Foerster, Seth A., et al.

Group Art Unit

3737

Examiner Name

Eleni Mantis Mercader

Attorney Docket Number

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

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Sheet 3 of 5

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Examiner Initials	Cite No. <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear
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		Office ^c	Number ^d	KindCode ^e				

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

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Sheet 4 of 5

Application Number 09/854,848

Filing Date	September 18, 2001
First Named Inventor	Foerster, Seth A., et al.
Group Art Unit	3737
Examiner Name	Eleni Mantis Mercader
Attorney Docket Number	END-777

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		Kind Code ²	Number			
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Examiner Initials	Cite No. ¹	Foreign Patent Document			Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear	T ³
		Office ⁴	Number ⁵	KindCode ⁶				

Examiner Signature	Date Considered

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 809. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

¹ Unique citation designation number. ² See attached Kinds of U.S. Patent Documents. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁴ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁵ Kind of document by the appropriate symbol as indicated on the document under WIPO Standard ST. 18 if possible. ⁶ Applicant is to place a check mark here if English language Translation is attached.

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Software for form 16ABR10

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(use as many sheets as necessary)

Sheet 5 of 5

Application Number	09/954,846
Filing Date	September 18, 2001
First Named Inventor	Foerster, Seth A., et al.
Group Art Unit	3737
Examiner Name	Eleni Mantis Mercader
Attorney Docket Number	END-777

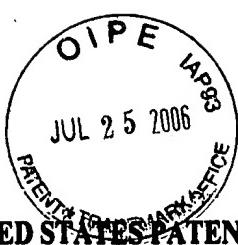
OTHER PRIOR ART - NON-PATENT LITERATURE DOCUMENTS

**Examiner
Signature** _____ **Date
Considered** _____

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Patent
Attorney Docket No. 032,290-109
(formerly END-777)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Foerster

Serial No.: 09/954,646

Filed: September 18, 2001

For: METHODS AND DEVICES FOR
DEFINING AND MARKING TISSUE

Group Art Unit: 3737

Examiner: Eleni M. Mantis Mercader

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SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with 37 CFR §§ 1.97 and 1.98, the items identified in this Information Disclosure Statement ("IDS") are brought to the attention of the Office. The items are listed on the attached form PTO-SB/08a and PTO-SB/08b. In accordance with §1.98(d), copies of some or all of the references listed on the attached Form PTO-SB/08a and PTO-SB/08b are not enclosed herewith because they were previously cited by or submitted to the Patent and Trademark Office in one or more of the prior U.S. Applications: U.S. Application No. 08/308,097, filed on September 16, 1994, now abandoned; U.S. Application No. 08/858,389 filed on May 19, 1997, issued as U.S. Patent No. 6,228,055; U.S. Application No. 09/776,125, filed on February 2, 2001; U.S. Application No. 10/213,638, filed August 7, 2002; U.S. Application No. 10/966,551, filed on October 15, 2004; U.S. Application No. 10/734,671, filed December 12, 2003; and U.S. Application No. 10/630,883, filed on July 30, 2003. Copies of the references can be provided at the request of the Examiner.

The items identified in this IDS may or may not be "material" pursuant to 37 CFR § 1.56. The submission thereof by Applicant is not to be construed as an admission that any such patent, publication or other information referred to therein is material or considered to be material (37 CFR

CERTIFICATE OF MAILING (37 C.F.R. §1.8a)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

September 30, 2005
Date of Deposit

Cynthia B. Pacheco
Cynthia B. Pacheco

10/05/2005 10000010 502862 09954646

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§ 1.97(h)), or even qualifies as "prior art" under 35 USC § 102 with respect to this invention unless specifically designated by Applicant as such.

INFORMATION DISCLOSURE STATEMENT FILING PROVISION:

- This IDS is believed to be timely in that it is being submitted under 37 CFR § 1.97(b), that is (1) within three months of the filing date of the application, which is not a continued prosecution application filed under § 1.53(d); or (2) within three months of entry of the national stage as set forth in 37 CFR § 1.491; or (3) before the mailing of a first Office action on the merits; or (4) before the mailing of a first Office action after filing a request for continued examination under § 1.114. Thus, no fee is required.
- However, if the undersigned is in error in this regard, Applicant respectfully requests that the Office consider this IDS as filed under 37 CFR § 1.97(c), if applicable, and charge the fee due under 37 CFR § 1.17(p) to the deposit account referenced below.
- However, if the undersigned is in error in this regard, Applicant respectfully requests that the Office consider this IDS as filed under 37 CFR § 1.97(c), if applicable, and a statement under 37 CFR § 1.97(e) is included below, thus no fee is required.
- This IDS is being submitted under 37 CFR § 1.97(c), that is after mailing of a first Office action on the merits, but before a Final Action under 37 CFR § 1.113 or a Notice of Allowance under 37 CFR § 1.311.
- The fee due under 37 CFR § 1.17(p) is submitted herewith.
- A statement under 37 CFR § 1.97(e) is included below, thus no fee is required. In the event that this IDS is not received before a Final Action or a Notice of Allowance, then Applicant respectfully requests that the Office consider the filing of these papers to be submitted under 37 CFR § 1.97(d) and charge the fee due under 37 CFR § 1.17(p) to the deposit account below.
- This IDS is being submitted under 37 CFR § 1.97(d), that is after a Final Action under 37 CFR § 1.113 or a Notice of Allowance under 37 CFR § 1.311, but before payment of the issue fee. A statement under 37 CFR § 1.97(e) is included below. The fee due under 37 CFR § 1.17(p) is submitted herewith.

Statement Under 37 CFR § 1.97(e):

- Each item contained in this IDS was first cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this IDS.
- No item contained in this IDS was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing this statement after

Patent
Attorney Docket No. 032,290-109
(formerly END-777)

making reasonable inquiry, no item of information contained in this IDS was known to any individual designated in 37 CFR § 1.56(c) more than three months prior to the filing of this IDS.

PAYMENT AND/OR AUTHORIZATION TO CHARGE FEES:

- A check in the amount of \$180.00 is enclosed for the above fee(s).
 Please charge \$180.00 to Deposit Account No. 50-2862 for the above fee(s).

The Commissioner is authorized to charge any fees required by the filing of these papers, and to credit any overpayment to O'Melveny and Myers' Deposit Account No. 50-2862.

Respectfully submitted,

O'MELVENY & MYERS LLP

Dated: September 30, 2005

By: Diane K. Wong
Diane K. Wong
Reg. No. 54,550
Attorneys for Applicant

DKW/cp
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(949) 760-9600

Substitute for form 1449A-PTO

OCT 16 2001
PATENT AND TRADEMARK OFFICE

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Sheet

1

of

2

Complete If Known	
Application No.	09/954,846
Filing Date	9/18/2001
First Named Inventor	Foerster
Art Unit	3737
Examiner Name	Eleni M. Mantis Mercader
Attorney Docket No.	032,290-109 (formerly END-777)

U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. ¹	Document No. Number-Kind Code ² (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
	1.	US 2,609,347	09/1952	Wilson	
	2.	US 2,653,917	09/1953	Hammon	
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	11.	US 5,148,813	09/1992	Bucalo	
	12.	US 5,204,382	04/1993	Wallace	
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Examiner Initials ⁶	Cite No. ¹	Foreign Patent Document Country Code ³ Number ⁴ Kind Code (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T ⁵
	19.	DE 0935625	11/1955			
	20.	EP 0255123	02/1988			
	21.	WO 0078228	12/2000			
	22.	WO 9513746	05/1995			

Examiner Signature	Date Considered
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

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Sheet 2 of 2 Attorney Docket No. 032,290-109 (formerly END-777)

Complete if Known

Application No.	09/854,848
Filing Date	9/18/2001
First Named Inventor	Foerster
Art Unit	3737
Examiner Name	Eleni M. Mantis Mercader

FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No. ¹	Foreign Patent Document Country Code ³ Number ⁴ Kind Code (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T ²
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NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s) volume-issue number(s), publisher, city and/or country where published	T ²
	24.	CLARKSON, P.: "Sponge Implants for Flat Breasts," Proceedings of the Royal Society of Medicine, Vol. 53 at 880-881 (1960)	
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Examiner Signature	Date Considered
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*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. 1 Applicant's unique citation designation number (optional). 2 See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. 3 Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). 4 For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. 5 Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. 6 Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Département à
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Division de la
recherche

Curtis, Philip Anthony
A.A. Thornton & Co.,
235 High Holborn
London WC1V 7LE
GRANDE BRETAGNE

Datum/Date

05.12.03

Zeichen/Ref./Réf. PAC/ags/18198A	Anmeldung Nr./Application No./Demande n°./Patent Nr./Patent No./Brevet n°. 03075084.8-1265-
Anmelder/Applicant/Demandeur/Patentinhaber/Proprietor/Titulaire ETHICON ENDO-SURGERY, INC.	

COMMUNICATION

The European Patent Office herewith transmits as an enclosure the European search report for the above-mentioned European patent application.

If applicable, copies of the documents cited in the European search report are attached.

- Additional set(s) of copies of the documents cited in the European search report is (are) enclosed as well.

The following specifications given by the applicant have been approved by the Search Division:

- abstract title

- The abstract was modified by the Search Division and the definitive text is attached to this communication.

The following figure will be published together with the abstract: **18, 19, 20.**



REFUND OF THE SEARCH FEE

If applicable under Article 10 Rules relating to fees, a separate communication from the Receiving Section on the refund of the search fee will be sent later.

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European Patent
Office

EUROPEAN SEARCH REPORT

Application Number
EP 03 07 5084

DOCUMENTS CONSIDERED TO BE RELEVANT			
Category	Citation of document with indication, where appropriate, of relevant passages	Relevant to claim	CLASSIFICATION OF THE APPLICATION (Int.Cl.7)
X	US 5 195 988 A (HAAGA) 23 March 1993 (1993-03-23) * figures 1-3 *	1-4	A61B19/00
X	US 5 433 751 A (INOTEB) 18 July 1995 (1995-07-18) * abstract *	1-9	
X	US 4 356 572 A (GUILLEMIN) 2 November 1982 (1982-11-02) * example 2 *	1-9	
X	US 5 085 629 A (GOLDBERG) 4 February 1992 (1992-02-04) * abstract *	1-4,7,8	
X	US 5 192 300 A (FOWLER) 9 March 1993 (1993-03-09) * column 5, line 61 - line 65; figures 8,9 *	1-4,7	
A	US 3 194 239 A (SULLIVAN) 13 July 1965 (1965-07-13) * column 2, paragraph 3 - paragraph 4; figures 1-4 *	1,5	TECHNICAL FIELDS SEARCHED (Int.Cl.7) A61B A61F
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The present search report has been drawn up for all claims			
1	Place of search THE HAGUE	Date of completion of the search 19 November 2003	Examiner Barton, S
CATEGORY OF CITED DOCUMENTS			
X : particularly relevant if taken alone Y : particularly relevant if combined with another document of the same category A : technological background O : non-written disclosure P : intermediate document			
T : theory or principle underlying the invention E : earlier patent document, but published on, or after the filing date D : document cited in the application L : document cited for other reasons & : member of the same patent family, corresponding document			

**ANNEX TO THE EUROPEAN SEARCH REPORT
ON EUROPEAN PATENT APPLICATION NO.**

EP 03 07 5084

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19-11-2003

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**ANNEX TO THE EUROPEAN SEARCH REPORT
ON EUROPEAN PATENT APPLICATION NO.**

EP 03 07 5084

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19-11-2003

Patent document cited in search report	Publication date		Patent family member(s)		Publication date
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			WO 9212678 A1		06-08-1992



**SUPPLEMENTARY
PARTIAL EUROPEAN SEARCH REPORT**

Application Number

which under Rule 45 of the European Patent Convention shall be considered, for the purposes of subsequent proceedings, as the European search report

EP 99 93 5335

DOCUMENTS CONSIDERED TO BE RELEVANT

Category	Citation of document with indication, where appropriate, of relevant passages	Relevant to claim	CLASSIFICATION OF THE APPLICATION (Int.Cl.6)
X	US 5 195 988 A (HAAGA ET AL) 23 March 1993 (1993-03-23) * column 4, line 3 - line 19 * * column 7, line 58 - column 8, line 8 *	1-4,14	A61B5/00
X	US 5 487 392 A (HAAGA ET AL) 30 January 1996 (1996-01-30) * column 5, line 51 - column 6, line 1; figure 3 *	1-4,11, 14	

The supplementary search report has been based on the last set of claims valid and available at the start of the search.

INCOMPLETE SEARCH

The Search Division considers that the present application, or some or all of its claims, does/do not comply with the EPC to such an extent that a meaningful search into the state of the art cannot be carried out, or can only be carried out partially, for the following claims:

Claims searched completely:

Claims searched incompletely:

Claims not searched:

Reason for the limitation of the search:

see sheet C

1

Place of search	Date of completion of the search	Examiner
The Hague	27 October 2005	Mayer-Martenson, E
CATEGORY OF CITED DOCUMENTS		
X : particularly relevant if taken alone Y : particularly relevant if combined with another document of the same category A : technological background O : non-written disclosure P : intermediate document		
T : theory or principle underlying the invention E : earlier patent document, but published on, or after the filing date D : document cited in the application L : document cited for other reasons & : member of the same patent family, corresponding document		

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ANNEX TO THE EUROPEAN SEARCH REPORT
ON EUROPEAN PATENT APPLICATION NO.

EP 99 93 5335

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27-10-2005

Patent document cited in search report		Publication date		Patent family member(s)		Publication date
US 5195988	A	23-03-1993	NONE			
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European Patent
Office

LACK OF UNITY OF INVENTION
SHEET B

Application Number
EP 99 93 5335

The Search Division considers that the present European patent application does not comply with the requirements of unity of invention and relates to several inventions or groups of inventions, namely:

1. claims: 1-13

biopsy localisation device with bioabsorbable element being
palpable

2. claims: 14-16

biopsy localisation device with bioabsorbable element having
roughened margins
